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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF DEL NORTE**

12 DIETRICH PENNINGTON

13 Petitioner,

14 v.

15 FRANCISCO JAQUEZ (Warden)

16 Respondent.

) Case No.:

)
) **DECLARATION OF PETITIONER**
) **DIETRICH PENNINGTON IN SUPPORT**
) **OF PETITION FOR WRIT OF HABEAS**
) **CORPUS**

17
18 I, Dietrich Pennington, hereby declare as follows:

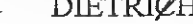
19 1. I am the Petitioner in the above-captioned matter, and could competently testify
20 to the matters set forth herein if called to do so.

21 2. While housed at Folsom State Prison, I was placed in administrative segregation
22 pending an investigation into my alleged association in a prison gang. I was subsequently
23 validated as an associate of the Black Guerilla Family (BGF) prison gang based upon three (3)
24 source items.
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3. I am not nor have I ever been a member or associate of the BGF or any other prison gang. In fact, I have not received a serious rules violation connected to gang activity while in prison.

4. I disavow any allegiance, association or membership in a prison gang, and any reports of such are patently false. I have never received a newspaper or publication for gang purposes. To the contrary, I read a myriad of newspapers to stay as informed as possible on current events and world affairs. Similarly, I possessed the writings of many notable authors including George Jackson because they are relevant to understanding Black history.

I, declare that the aforementioned is true and accurate to the best of my knowledge and attested to under penalty of perjury, as sworn to me on this 22 day of May 2011 in Del Norte County.


DIETRICH PENNINGTON

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EXHIBIT A

Jim copy

On July 31, 2008, Investigative Services Unit (ISU) at Folsom State Prison (FSP) completed an investigation into the gang status of inmate PENNINGTON, H-32632, AKA "SHAKIR". After a review of the evidence, I found sufficient documentation to conclude that inmate Pennington is currently an Associate of the Black Guerrilla Family, (BGF) Prison Gang.


1. Symbols: CDC 128B dated July 11, 2007, authored by Officer S. Russell, articulates the discovery of a burgundy tumbler (drinking cup) with an etched picture of a dragon located on the side of the tumbler. Inmate Pennington's AKA "Weusi" was etched on one side of the dragon along with "Joka" (Swahili for dragon) etched on the opposite side. The dragon is the most common identifying symbol utilized by members and associates of the BGF. George Lester Jackson, (former BGF leader) was considered to be much like the spirit of the dragon, and members of the BGF called Jackson's successor Jeffrey "Khatari" Gaulden, "the dragon." Inmate Pennington's possession of this etched picture, which utilizes the image of the "dragon," shows his dedication and loyalty to the Black Guerrilla Family prison gang. Additionally, an etched drawing of a man breaking through the continent of Africa was located on the tumbler.

2. Written Material: CDC 128B dated March 31, 2008, authored by Officer S. Russell articulates the discovery of a composition handbook belonging to inmate Pennington. The handbook was discovered in inmate Pennington's personal property. Upon reviewing the inner pages of the handbook, hand written in black and red ink were notes and quotes from the writings of Fleeta Drumgo and George Jackson. John Clutchette, Fleete Drumgo, and George Jackson, were known as the "Soledad Brothers". The "Soledad Brothers" were charged with the murder of CO John V. Mills in 1970. Inmate Pennington's possession of this handbook shows his beliefs in the ideals of the BGF and therefore should be considered a source of validation as Written Material towards inmate Pennington being validated as an associate of the BGF prison gang.

3. Communications (Direct Link): CDC 128B dated July 15, 2008, authored by Officer S. Russell articulates the discovery of an article cut out of the "Bayview" newspaper. The article is authored by, validated Black Guerilla Family (BGF) member WARREN JORDAN B-42117, validated on May 20, 1980. Within the article JORDAN communicates to associates of the BGF via the "BAYVIEW" newspaper as to which material needs to be studied, by listing them as confiscated material by the Institutional Gang Investigators (IGI) at Pelican Bay State Prison (PBSD). The article contains Warren Jordan's contact information, specifically his CDCR identification number, assigned cell, and P.O. Box registered to Pelican Bay State Prison. The cut out article was discovered in a box containing personnel papers belonging to inmate Pennington. Inmate Pennington's possession of this article shows his ability to communicate with a validated BGF Member. Inmate Pennington's possession of this article should count as one (1) validation source point (direct link) towards Pennington's membership and or association with the prison gang known as the Black Guerilla Family.

On July 31, 2008, at approximately 0937 hours, ISU provided inmate Pennington with copies of aforementioned 128B's. On August 1, 2008, at approximately 1045 hours, ISU conducted an interview with inmate Pennington allowing him the opportunity to contest the validation points being used against him during the validation process. Pennington elected to challenge the points used against him however, Pennington stated he was not finished with his written statement. I informed inmate Pennington I would return at 1330 hours. At approximately 1330 hours, inmate Pennington provided me with the following written statement. "See attached document." ISU informed Pennington a validation package containing his statement would be submitted to the Office of Correctional Safety.

On August 1, 2008, ISU provided inmate Pennington with a copy of this 128B. On Tuesday, August 5, 2008, a validation package was submitted to the Office of Correctional Safety (OCS) for review and approval in order to validate Pennington as an associate of the Black Guerrilla Family prison gang. This investigator is also requesting a CDC-128B2 Gang Chrono from the Office of Correctional Safety (OCS).


D Arriola
Investigative Services Unit
Folsom State Prison

Date: August 1, 2008

GANG RELATED

General Chrono

STATE OF CALIFORNIA
CDC 128-B-2 (4/07)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

INMATE'S NAME: PENNINGTON, Dietrich

CDCR NUMBER: H32632

On 08/07/2008 a gang validation package regarding subject was received from Institution Gang Investigator Lt. T. J. Langford at FOL.

TOTAL NUMBER OF ITEMS SUBMITTED FOR REVIEW: (3)

The following items meet the validation requirements:

1. CDCR 128B dated 07/15/2008 (Communication - Direct Link)
2. CDCR 128B dated 03/31/2008 (Written Material)
3. CDCR 128B dated 07/11/2007 (Symbol)

TOTAL NUMBER OF ITEMS WHICH MEET VALIDATION REQUIREMENTS: (3)

The following items do not meet the validation requirements and were/shall not be used as a basis for validation:

TOTAL NUMBER OF ITEMS WHICH DO NOT MEET VALIDATION REQUIREMENTS: (0)

ACTION OF REVIEWER

Pursuant to the validation requirements established in 15 CCR Section 3378, Dietrich PENNINGTON is:

☒ VALIDATED ☐ REJECTED

as an associate of the BLACK GUERRILLA FAMILY (BGF) prison gang.

CHAIRPERSON

REVIEWER

MEMBER

PRINTED NAME

PRINTED NAME

PRINTED NAME

DISTRIBUTION:

Original - Central File
 Copy - Classification & Parole Representative/Parole Administrator I
 Copy - Institutional Gang Investigator/Region Gang Coordinator
 Copy - Office of Correctional Safety - Special Service Unit
 Copy - Inmate/Parolee _____ by _____

ACTIVE/INACTIVE REVIEW

03/24/2014

ELIGIBILITY DATE

Date: 08/28/2008

SSU GANG VALIDATION/REJECTION REVIEW

GENERAL CHRONO

EXHIBIT B

NAME and NUMBER

PENNINGTON H-32632

On March 24, 2008, I conducted a search of cell 3B-5B-24 assigned to inmate PENNINGTON, H-32632 (aka "Weusi"). During the cell search various pieces of paper were confiscated from PENNINGTON'S assigned bunk and boxes containing papers with PENNINGTON'S name and CDCR number.

On March 25, 2008 I proceeded to search the property, which I confiscated from inmate PENNINGTON on March 24, 2008. Two of the confiscated items, were articles from the "BAYVIEW" newspaper dated January 2, 2008, (one original and one photocopy). The article is authored by, validated Black Guerilla Family (BGF) member WARREN JORDAN B-42117. Within the article JORDAN communicates to associates of the BGF via the "BAYVIEW" newspaper as to which material needs to be studied, by listing them as confiscated material by the Institutional Gang Investigators (IGI) at Pelican Bay State Prison (PBSB). JORDAN informs the BGF associates that possession of the BGF constitution and the two books: Blood in my Eye, and Soledad Brother (authored by BGF co-founder George Jackson) are considered a source point towards validation, (written materials). In the conclusion of this article, JORDAN gives his name, CDCR number, and housing at Pelican Bay State Prison so members and associates of the BGF can communicate with him.

On July 12, 2008 I conducted a cell search of PENNINGTON'S assigned cell 3B-5B-24. During the search I discovered the "BAYVIEW" article, authored by validated BGF member JORDAN B-42117 dated January 2, 2008. PENNINGTON later approached me with a copy of the cell search receipt and asked why the newspaper article was confiscated. I explained to PENNINGTON that a validated member of the BGF prison gang authored the article and the article is considered contraband. PENNINGTON stated, "That is public information, I have a right to have it, it's the first amendment."

Inmate PENNINGTON having the original copy of the aforementioned article in his in his possession (which was specifically cut out) clearly proves this article is of great significance to him. Inmate PENNINGTON possessing multiple copies of the article written by JORDAN proves that he is using the article to distribute JORDAN'S name, CDCR number, and housing number to ensure other BGF associates/members may communicate with JORDAN. This document should count as one (1) validation source point (direct link) towards PENNINGTON'S membership and or association with the prison gang known as the Black Guerilla Family.

cc: C-File
Writer
Counselor

This document meets the
validation requirements
established in CCR Title 15
Section 3378
SWJ
9/11/08



S. RUSSELL
Unit III Tier Officer
Folsom State Prison

DATE: 7-15-08

GANG INFORMATION

GENERAL CHRONO

EXHIBIT C

NAME and NUMBER

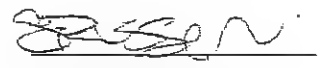
PENNINGTON H-32632

On March 24, 2008, I conducted a cell search of cell 3B-5B-24 housed by inmate PENNINGTON, H-32632 (aka "Weusi"). During the course of my search I discovered a composition notebook within PENNINGTON's personal property that has a picture of a woman wearing a bikini on the cover. On the inside of the composition notebook there are several quotes written in ink and "Shakir Shafiq Abdulla (AKA) Dietrich Pennington" underneath PENNINGTON's name his CDCR number H32632 is written out. In the back section of the notebook there are handwritten notes on the writings of Fleeta Drumgo and summary of part of a letter written to Fay Stender in April 1970 from the book "Soledad Brother" authored by Black Guerilla Family (BGF) co founder George Jackson. In the margin of the page PENNINGTON has written "George Jackson, Soledad Brother, Banton Books, New York, 1970, p.29".

George L. Jackson, Fleeta Drumgo, and John Cluchette were nicknamed the "Soledad Brothers" after beating and killing a Correctional Officer by throwing him to the ground from the third tier at Soledad State Prison. Shortly thereafter, the "Soledad Brothers" were transferred to San Quentin State Prison where George L. Jackson was fatally shot and killed on August 21, 1971 during a failed escape attempt. Fleeta Drumgo, a validated member of the BGF was also part of a group nicknamed the "San Quentin six". This group assaulted several Correctional Officers and killed one Correctional Sergeant and two Correctional Officers during this escape attempt. George L. Jackson is considered a martyr by the BGF and is mentioned in BGF documents such as the BGF Oath, and the BGF constitution. This document should count as one (1) validation source point, (written materials) to inmate PENNINGTON's membership/and or association with the prison gang known as the Black Guerilla Family.

cc: C-File
Writer
Counselor

This document meets the
validation requirements
established in CCP Title 15
Section 3978
S/R 9/11/08


S. RUSSELL
Unit III 5th Tier Officer
Folsom State Prison

DATE: 3-31-08

GANG INFORMATION

GENERAL CHRONO

EXHIBIT D

NAME and NUMBER

PENNINGTON H-32632

On July 10, 2007, I conducted a cell search of cell 3B-5B-24 housed by inmate PENNINGTON, H-32632 (aka "Weusi"). During the course of my search I discovered a burgundy tumbler with a picture of a dragon etched onto it with the words "Joka" and "Weusi" written vertically down opposite sides from each other. There is also a picture of an African warrior coming out of the continent of Africa on the opposite side of the tumbler from the picture of the dragon.

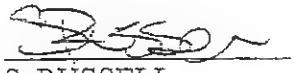
The dragon is the most common identifying symbols utilized by members and associates of the Black Guerilla Family prison gang (BGF). George Lester Jackson, co founder of the BGF was considered to be much like the spirit of the dragon, and members of the BGF called Jackson's successor Jeffrey, "Khatari" Gaulden, "the dragon." This drawing is significant because, "The Dragon" or, "Joka" (Swahili for Dragon) is viewed by most BGF member/associates as the symbol of life (preserver) and death (destroyer). Many BGF members and associates believe the power of the dragon protects the righteous and destroys the unrighteous enemy. The Swahili word, "Weusi" translates into English as "Darkness". This is considered to be a source point for the purpose of validation within CDCR.

On July 11, 2007, inmate PENNINGTON approached me and asked if I searched his cell on 7/10/07. I told him another officer and I had searched his cell. PENNINGTON stated, "You guys took my tumbler". I asked PENNINGTON what the tumbler looked like. Inmate PENNINGTON stated, "it is burgundy and has some writing on the sides." I questioned PENNINGTON about what was written on it. Pennington described the dragon, the African warrior and the Swahili word "Weusi", however he omitted the other Swahili word "Joka". I asked PENNINGTON what the word "Weusi" meant and he shook his head and stated, "I'm not going to tell you." I then asked PENNINGTON if he was a member of the BGF. Pennington stated, "You are not a gang investigator" and walked away.

cc: C-File
Writer
Counselor

This document meets the
validation requirements
established in CCR Title 15
Section 3378

6/11/07


S. RUSSELL
Unit III 5th Tier Officer
Folsom State Prison

DATE: 7-11-07

GANG INFORMATION

GENERAL CHRONO

EXHIBIT E

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: DEC 23 2010

In re: Dietrich Pennington, H32632
Pelican Bay State Prison
P.O. Box 7000
Crescent City, CA 95531-7000

IAB Case No.: 0926725

Local Log No.: PBSP-10-00079

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner C. Tileston, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that he disputes his current validation. He claims that source item number one is incorrect. He claims that inmates cannot communicate with other inmates without the permission of the inmates' correctional counselors and captains. He claims he never requested for a correspondence approval and he did not complete a CDC Form 1074, Request for Correspondence Approval. He claims source item number two concerns written materials. He claims that notes taken on books concerning the history of quotes is in violation of his beliefs. He claims that none of the source items depict gang activity. He is requesting to be released from the Security Housing Unit (SHU) and returned to the general inmate population. He is also requesting for all documents to be removed from his central file.

II SECOND LEVEL'S DECISION: The reviewer found that there was no basis to grant the grievance. The appellant was informed that the source items used for his validation package meet the criteria pursuant to the California Code of Regulations, Title 15, Section (CCR) 3378. Upon the conclusion of the investigation into the appellant's gang status, the validation package was submitted to the Office of Correctional Safety (OCS) for review. The appellant was subsequently validated on August 28, 2008. The Second Level of Review (SLR) notes the appellant has attempted to change his requested appeal action. He initially requested to be released from the SHU. In Section "F" he denies allegations of being a prison gang member/associate. He also begins to challenge if he poses an immediate threat to the safety of others or institutional security.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: The Director's Level of Review (DLR) found that the documentation and arguments presented are persuasive that the appellant has failed to support his appeal issue with sufficient evidence or facts to warrant a modification in the SLR. The Folsom State Prison (FSP) Institution Gang Investigator (IGI) actions were within departmental policy pursuant to the CCR 3378 and the CDC Operations Manual, Section (DOM) 52070.21.1. The information was provided to the appellant via the appropriate documents. The FSP IGI referred the case to the OCS for a determination of the appellant's status. The OCS approved the CDC Form 128-B2, Gang Validation/Rejection Review Chrono, validating the appellant as a member of the Black Guerrilla Family pursuant to the CCR 3378 and the DOM 52070.21.3. The OCS received the validation package from the FSP on August 7, 2008. The information was reviewed pursuant to departmental policies and a determination was made by the OCS to approve the validation of the appellant on August 28, 2008. The appeals examiner did not find any violation of departmental policies by the FSP IGI or the OCS.

The appellant's placement in the Administrative Segregation Unit and his imposed SHU term are pursuant to the CCR 3341.5(c)(2)(A)(2) which states, "Except as provided at section 3335(a), section 3378(d) and subsection (c)(5), a validated prison gang member or associate is deemed to be a severe threat to the safety of others or the security of the institution and will be placed in a SHU for an indeterminate term." The appellant current validation is due to his active status. His next active/inactive review is not required until March 24, 2014. The appellant has failed to provide any new evidence or

information to warrant a modification of the SLR. Therefore, relief at the DLR for the appellant is not warranted.

B. BASIS FOR THE DECISION:

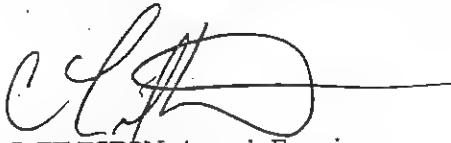
California Penal Code Section: 5058

CCR: 3023, 3084.1, 3270, 3341.5, 3375, 3375.1, 3375.2, 3376, 3376.1, 3377, 3377.1, 3378

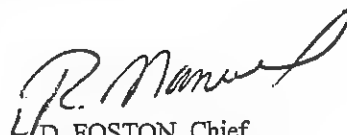
DOM: 52070.1, 52070.2, 52070.3, 52070.6.1, 52070.6.2, 52070.6.4, 52070.15.1, 52070.15.5, 52070.16, 52070.16.1, 52070.16.2, 52070.17.2, 52070.17.3, 52070.17.4, 52070.18, 52070.18.1, 52070.18.2, 52070.18.2.3, 52070.19, 52070.19.2, 52070.19.3, 52070.19.4, 52070.19.5, 52070.21, 52070.21.1, 52070.21.2, 52070.21.3, 52070.21.4, 52070.26, 72010.7.2

C. ORDER: No changes or modifications are required by the Institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.



C. TILESTON, Appeals Examiner
Inmate Appeals Branch



D. FOSTON, Chief
Inmate Appeals Branch

cc: Warden, PBSP
Appeals Coordinator, PBSP

**INMATE/PAROLEE
APPEAL FORM**
CDC 602 (1/2/17)

PBSP

gao IAE **Gang Validation**

Location: Institution/Parole Region

Log No.

Category

1. **FSP**
2. **PBSP**

1. **10-00079**
2. **211-01211**

Memor

You may appeal any policy, action or decision which has a significant adverse effect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	UNIT	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
PENNINGTON, D	UNIT	32632	UNASSIGNED DID	D5-122

A. Describe Problem:

This 602 is to challenge all points in said validation package regarding subject received for institution Gang Investigator Lt. T.J. Langford at Folsom State Prison. I'm challenging point 1 CDCR 128B dated 7-15-2008 (Communication - Direct Link), because inmates can't communicate with other inmates at other prisons without first written notice from their coordinator to said Title 15 3139 Correspondence between Inmates, Parolees, and Probations; without written authorization from Warden/Administrator or their designee/assigned officer or person in charge of the State

If you need more space, attach one additional sheet.

- continue on additional sheet

B. Action Requested:

I request that I be release from the SHU Security Housing Unit at PBSP, and return to general population as soon as possible. Also that all documents be expunge from my C-File

Inmate/Parolee Signature:

[Signature]

Date Submitted:

23 November 09

C. INFORMAL LEVEL (Date Received: **12-16-09**) **Denied.**

Staff Response: *You are validated and are being retained SHU/WOST due to posing a threat to safety and security of the institution, and so your request to be released from PBSP-SHU is denied.*

Staff Signature:

[Signature] **CCI**

Date Returned to Inmate:

12-18-09

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Dissatisfied. I'm still challenging all points in said validation package point 1 CDCR 128B dated 7-15-08 Communication - Direct Link, point 2 CDCR 128B dated 3-31-08 Written Material, point 3 CDCR dated 7-11-07 Symbol, all these are addressed above in describe problem.

Signature:

[Signature]

Date Submitted:

20 Dec. 2009

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

RA C-4 12/1/09 NF

MAR 30 2010

2nd look 164

MEMOR FSP issue

MAY 07 2010

FSP APPEALS OFFICE

First Level ☐ Granted ☐ P. Granted ☒ Denied ☐ Other

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: 2-22-10

Due Date: 4/6/10

Interviewed by: _____

RECEIVED

AUG 12 2010

INMATE APPEALS BRANCH

See Attached

T. Butler Adv 5:20

INMATE APPEALS BRANCH

JUN 28 2010

RECEIVED

Staff Signature: _____

Division Head Approved: _____

Signature: _____

Title: C/SGT

Title: C/Lt.

Date Completed: 2/23/10

Returned: _____

Date to inmate: 2-23-10

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

The allegations are untrue. I am not a prison gang (member/associate), much less an active one. I am not a threat to the safety of others or institution security. The information cannot support a finding that I posed an "immediate threat" to the safety of others or institution security. (Cal. Code Regs., tit. 15, sections 3335(a), 3339(a) & 3341.5(c)(3)(E)).

Signature: _____

Date Submitted: 11 April 2010

Second Level ☐ Granted ☐ P. Granted ☒ Denied ☐ Other

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: 5-7-10

Due Date: 6-1-10

☒ See Attached Letter

Signature: _____

Date Completed: 5-20-10

Warden/Superintendent Signature: _____

RICK M. HILL, Warden (A)

Date Returned to Inmate: 5-24-10

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

Im Pennington was issued this 602 appeal on: 6/24/10 by C/O D Harlow, DS Floor.

Dissatisfied still challenging all points in validation package & points 1. CDCR 128B dated 7-15-08 (Communication - Direct LINK) 2. CDCR dated 3-31-08 (Written Material), 3. CDCR 7-11-07 (Symbol) all the above allegations described. The allegations are untrue. I am not a prison gang (member/associate), much less an active one. I am not a threat to the safety of others or institution security.

Signature: _____

Date Submitted: 24 JUNE 2010

For the Director's Review, submit all documents to: Director of Corrections
P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: ☐ Granted ☐ P. Granted ☒ Denied ☐ Other

☒ See Attached Letter

Date: _____

DEC 23 2010

DOC 602 (12/87)

32632H



929260

CONTINUE FROM CDCR 602 Inmate Appeal Form -
PENNINGTON, D. H-32632 D5-122

Prison or ~~Correctional~~ ^{HOUSING UNIT} system at a level not less than Correctional
Captain / Facility Captain. I never requested correspondence approval
nor send in a CDC Form 1074 (Rev. 08/87) requesting to correspond
with said inmate, that I'm accuse of in the 128B dated 7-15-08.

Point 2 CDCR 128B dated 3-31-2008 (Written Material) notes
taken on books read concerning the history of Quotes, is in violation
of my beliefs, not actual gang activity as the regulations require.
None of the Source Items detail any behavior indicating of gang
activity that I'm allegedly associated with. CDCR has no proof
~~that~~ ~~which~~ evidences that I'm involved in gang activity, IN
none of the source items.

Dietrich PENNINGTON H-32632
Dietrich Pennington H-32632

Memorandum

Date : February 23, 2010

To : Inmate Pennington H-32632

From : Folsom State Prison-Represa, CA 95671

Subject : FOLSOM APPEAL LOG #FSP-0-10-00079)
(FIRST LEVEL APPEAL RESPONSE)

SUMMARY OF APPEAL:

You are challenging all points of validation used against you in the validation package submitted by Lieutenant T. Langford. You are challenging the CDCR-128B dated July 15, 2008 (communication-Direct Link) because inmates can't communicate with other inmates at other prisons, without first written notice from their counselor, as defined in CDCR Title 15 section 3139.

The second point of validation you are challenging is in regards to CDCR-128B (written material) dated March 31, 2008. You contend notes taken out of books concerning the history of quotes, is in violation of your beliefs, not actual gang activity. You contend none of the source items detail any behavior indicating gang activity that you are allegedly associated with.

ACTION REQUESTED:

You are requesting that you be released from the Security Housing Unit (SHU) at Pelican Bay State Prison (PBSP) and returned to the general population. You are also requesting all documents be expunged from your Central File.

INTERVIEWED BY:

Correctional Sergeant J. Packard interviewed the appellant at the first level of review on Tuesday, February 23, 2010. Appellant is currently housed at PBSP; the interview was conducted via institutional phones. .

REGULATIONS: The rules governing this issue are:

3378. Critical Case Information.

(a) Any information regarding an inmate/parolee which is or may be critical to the safety of persons inside or outside an institution shall be documented as required below on a CDC Form 812 (Rev. 8/01), Notice of Critical Case Information-Safety of Persons (Non-confidential Enemies); a CDC Form 812-A (Rev. 9/92), Notice of Critical Information-Prison Gang Identification; CDC Form 812-B (9/92), Notice of Critical

Information-Disruptive Group Identification; and CDC Form 812-C (Rev. 8/01), Notice of Critical Information-Confidential Enemies. The CDC Forms 812, 812-A, 812-B, and 812-C and all documents referred to on the forms shall be filed in the central file of each identified inmate/parolee. Any confidential material affecting the critical case factors of an inmate/parolee shall conform to the provisions of section 3321. Entries on these forms shall not be a substitute for detailed documentation required elsewhere in the central file.

(b) A CDC Form 812, and when applicable a CDC Form 812-C, shall be completed for each newly committed or returned inmate/parolee. (1) The CDC Forms 812 and 812-C shall be updated as any critical information becomes known and is documented in the inmate/parolee's central file. The forms shall also be reviewed and updated at the time of any change in the inmate/parolee's status or placement. (2) Any inmate/parolee who claims enemies shall provide sufficient information to positively identify the claimed enemy. Any inmate/parolee identified as an enemy shall be interviewed unless such interview would jeopardize an investigation or endanger any person. The results of the interview or investigation which supports, verifies or disproves the information shall be documented on a CDC Form 128-B, General Chrono. (3) Notations on the CDC Forms 812 and 812-C, or absence thereof, shall not be the sole basis for a staff decision or action, which may affect the safety of any person.

(c) Gang involvement allegations shall be investigated by a gang coordinator/investigator or their designee.

(1) CDC Form 812-A or B shall be completed if an inmate/parolee has been verified as a member, associate, or dropout of a gang (prison gang or disruptive group) as defined in section 3000, or has safety concerns relating to gangs.

(2) Information entered onto the CDC Form 812-A or B shall be reviewed and verified by the gang coordinator/investigator to ensure that the identification of an inmate/parolee as a gang member or associate, or as having safety concerns is supported by at least three independent source items in the inmate/parolee's central file. The independent source items must contain factual information or, if from a confidential source, meet the test of reliability established in section 3321. The verification of an inmate/parolee identified as a gang dropout shall require a formal debriefing conducted or supervised by a gang coordinator/investigator.

(3) A member is an inmate/parolee who has been accepted into Membership by a gang. This identification requires at least (3) independent source items of documentation indicative of actual membership.

(4) An associate is an inmate/parolee who is involved periodically or regularly with members or associates of a gang. This identification requires at least three (3) independent source items of documentation indicative of association with validated gang members or associates.

(5) A dropout is an inmate/parolee who was either a gang member or associate and has discontinued gang affiliation. This identification requires the inmate/parolee to successfully complete the debriefing process.

(6) The verification of an inmate/parolee's gang identification shall be validated or rejected by the assistant director, law enforcement and investigations unit (LEIU), or a designee. The validation and/or rejection of evidence relied upon shall be documented on a CDC Form 128-B2, Gang Validation/Rejection n Review, and forwarded to the

facility or parole region of origin for placement in the inmate/parolee's central file. Upon receipt of the CDC Form 128-B2, the Classification and Parole Representative or Parole Administrator I, or their designee, shall clearly note in some permanent manner upon the face of every document whether or not the item met validation requirements.

(7) The CDC Forms 812-A and 812-B shall be reviewed by a classification committee at each annual hearing and upon any review for transfer consideration. This shall be documented on a CDC Form 128-G, Classification Chrono. Questionable gang identifications, notations, or new information shall be referred to the gang coordinator/investigator for investigation.

(8) The determination of a gang identification shall reference each independent source item in the inmate/parolee's central file. The sources shall be based on the following criteria: (A) Self admission.

(B) Tattoos and symbols. Body markings, hand signs, distinctive clothing, graffiti, etc., which have been identified by gang coordinators/investigators as being used by and distinctive to specific gangs.

(C) Written material. Any material or documents evidencing gang affiliation such as the membership or enemy lists, constitutions, organizational structures, codes, training material, etc., of specific gangs.

(D) Photographs. Individual or group photographs with gang connotations such as those, which include insignia, symbols, or validated gang affiliates.

(E) Staff information. Documentation of staff's visual or audible observations, which reasonably indicate gang affiliation.

(F) Other agencies. Information evidencing gang affiliation provided by other agencies. Verbal information from another agency shall be documented by the staff person who receives such information, citing the source and validity of the information.

(G) Association. Information related to the inmate/parolee's association with validated gang affiliates.

(H) Informants. Documentation of information evidencing gang affiliation from an informant shall indicate the date of the information, whether the information is confidential or nonconfidential, and an evaluation of the informant's reliability. Confidential material shall also meet the requirements established in section 3321.

(I) Offenses. Where the circumstances of an offense evidence gang affiliation such as where the offense is between rival gangs, the victim is a verified gang affiliate, or the inmate/parolee's crime partner is a verified gang affiliate.

(J) Legal documents. Probation officer's report or court transcripts evidencing gang affiliation.

(K) Visitors. Visits from persons who are documented as gang "runners" or community affiliates, or members of an organization which associates with a gang.

(L) Communications. Documentation of telephone conversations, mail, notes, or other communication, including coded messages evidencing gang affiliation.

(M) Debriefing reports. Documentation resulting from the debriefing required by (c)(2), above.

SUMMARY OF INVESTIGATION:

On Tuesday, February 23, 2010, Sergeant J. Packard interviewed you regarding this appeal. You stated your written appeal was accurate and complete and you are reiterated the information you documented in the appeal. You also stated the cup that was used in the validation, was left to you by an inmate that had paroled and you have had the cup for ten years.

On Tuesday, February 23, 2010, Sergeant J. Packard interviewed Officer A. Arriola who provided the following information. Officer Arriola stated he completed an investigation into inmate Pennington's association with the Black Guerilla Family, ("BGF") prison gang. Officer Arriola stated at the conclusion of this investigation a validation package was completed and submitted to the Office of Correctional Safety (OCS). Officer Arriola stated this process was completed in a professional and thorough manner.

CONCLUSION:

Your written appeal and attached documents have been reviewed. The action requested to resolve this appeal is **DENIED**. All of the documents submitted regarding your association with the Black Guerilla Family meet the criteria per CCR Title 15 section 3378. You were extended all of the due process rights within this process. Prior to the submission of these documents you were interviewed and afforded the opportunity to be heard in regard to the source items used in the validation. You contested each one of the source documents used in the validation. Your comments on each one of the points used was documented and attached to the validation package. These points of validation were supported and accepted by the Office of Correctional Safety and you have been validated as an associate of the Black Guerilla Family ("BGF") prison gang

DECISION

Based on the aforementioned information, your appeal is **DENIED** at the first level.



J. Packard
Correctional Sergeant
Investigative Services Unit

Memorandum

3Date: May 20, 2010

To: PENNINGTON, H-32632
Pelican Bay State Prison

Subject: SECOND LEVEL APPEAL RESPONSE
LOG NO.: FSP 10-00079

ISSUE:

Appellant is appealing, "...all points in said validation package..." - specifically appellant contends that he never requested correspondence approval with said inmate in CDC 128B-2 of July 15, 2008 (a document utilized in the appellant's validation package). Additionally appellant contends the CDC 128 B dated March 31, 2008 contains notes taken on books read concerning the history of quotes, is in violation of his beliefs, not actual gang activity as regulations require. In sum, the appellant claims none of the source items detail any behavior indicating gang activity and the California Department of Corrections and Rehabilitation has no proof which evidences that he is involved in gang activity.

Appellant is requesting the release from the Security Housing Unit (SHU) at Pelican Bay State Prison (PBSP) and the return to the general population as soon as possible. Also, that all documents be expunged from his central file.

INTERVIEWED BY: Correctional Sergeant J. Packard on February 23, 2010.

REGULATIONS: The rule governing this issue is:

California Code of Regulations (CCR), Title 15, Section 3001. Subject to Regulations.

Regardless of commitment circumstances, every person confined or residing in facilities of the department is subject to the rules and regulations of the director, and to the procedures established by the warden, superintendent, or parole region administrator responsible for the operation of that facility. Persons on parole or civil addict outpatient status are subject to such director's rules, regulations and parole region procedures as may be applicable to such persons.

The Second Level of Review (SLR) has reviewed this appeal and all documentation attached by appellant. The SLR finds that the First Level of Review (FLR) has completed a thorough investigation related to appellant's concerns and has given the appellant a thorough concise response.

The SLR finds that the FLR has explained to the appellant that the documents submitted regarding his association with the Black Guerilla Family meet the criteria per CCR section 3378. Critical Case Information.

In the appellant's request for a SLR, he notes the following chronos relied upon in his gang validation package and with his CDC 602 Form elaborates on the reasons for challenging each item. The SLR notes the following source documents stated to meet the validation requirements and the fact all are in CDC 128 B-2 dated August 28, 2008 (attached):

CDC 128B, dated July 15, 2008
CDC 128B, dated March 31, 2008
CDC 128B, dated July 11, 2007


Additionally, the SLR notes the investigator at the FLR spoke to Correctional Officer A. Arriola whom completed the investigation into the appellant's association with the Black Guerilla Family prison gang. Officer Arriola stated upon completion of the preparation process, the package was submitted to the Office of Correctional Safety. The appellant was subsequently validated on August 28, 2008 in accordance with departmental policies.

The SLR notes the appellant attempts to change the focus of his appeal in section F. of the CDC 602 Form where he denies allegation of being a prison gang member/associate. He also begins to challenge if he poses an immediate threat to the safety of others or institutional security. Originally, in section B. of the appeal, the appellant simply requested release from the SHU. And in section D. of the appeal the appellant itemizes and challenges the source documents utilized in the validation package.

DECISION: The appeal is denied, as the appellant has not presented compelling evidence to refute the FLR decision. The basis of denial to the appellant's request is due to documented gang validation package completed in accordance with departmental policy. Hence, the appeal is denied, the appellant's request for release from the SHU at PBSP is denied and all appropriated documentation shall remain within the appellant's central file.

Basis for decision: the California Code of Regulations, Title 15, Subchapter 4. Article 7. Segregation Housing and Article 1. Classification, section 3378.

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.


RICK M. HILL
Warden (A)